474

SUPREME COURT OF THE UNITED STATES.

No. 110.

THE UNITED STATES, APPELLANTS,

vs.

VICENTE CANTUA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Proceedings before commissioners	1	1
Petition	2	1
Deposition of W. E. P. Hartnell	3	2
Espediente	4	3
Map	7	4
Certificate of surveyor general	8	4
Translation of Espediente	9	4
Exhibit No. 1 to deposition of Hartnell	11	5
Translation of title	18	9
" juridical possession	20	10
Opinion of commissioners	24	13
Decree of confirmation	25	13
Certificate of secretary	26	14
" clerk district court	27	14
Proceedings in district court	28	15
Notice of appeal	30	15
Petition for review	31	16
Answer	38	20
Decree of district court	39	20
Appeal granted	40	21
Certificate of clerk	41	21

GIDEON, print.

Transcript of the proceedings in case No. 290, *Vicente Cantua, claimant, vs. The United States, defendant—for the place named "Rancho Nacional."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this seventeenth day of July, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Bicente Cantua, for the place named Rancho Nacional, was presented and ordered to be filed and docketed with No. 290, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January 29th*, 1853.

In case No. 290—Vicente Cantua, for the place named "Rancho Nacional"—the deposition of Wm. E. P. Hartnell, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with document marked H. J. T., No. 1, annexed thereto, was filed.

(Vide page 4 of this Transcript.)

SAN FRANCISCO, *September 23d*, 1853.

Case No. 290 called, submitted on briefs on both sides, and taken under advisement by the board.

SAN FRANCISCO, *January 24th*, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(Vide page 24 of this Transcript.)

Petition.

To the honorable Commissioner to settle private land claims in California.

The petitioner, Vicente Cantua, respectfully shows that on the 4th of April, A. D. 1839, Juan B. Alvarado, governor of California, by virtue of authority in him vested, granted to the petitioner the tract of land called "Rancho Nacional," situate in the present county of Monterey, containing two square leagues, more or less, with the boundaries described in the title-papers, a copy of which title is submitted here-

with, marked "A," with a translation marked "B," and also a certified copy of the expediente marked "C," with a translation marked "D."

And the petitioner further shows that said land was duly surveyed, its boundaries marked, and the juridical possession given to the petitioner on the 30th day of July, A. D. 1840, a copy of which act is submitted herewith, marked "E," with a translation marked "F." That he is now, and has been for more than 13 years, in the quiet, peaceful, and undisputed possession of said tract of land. That he knows of no conflicting claim. That he relies for confirmation of title upon the original papers, copies of which are submitted herewith, upon the records and archives now in charge of the surveyor general, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the said tract of land.

By his attorneys:

(Signed) HALLECK, PEACHY & BILLINGS.

Filed in office, July 17th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of Wm. E. P. Hartnell.

SAN FRANCISCO, *January* 29, 1852.

On this day, before Commissioner H. J. Thornton, came Wm. E. P. Hartnell, a witness on behalf of the claimant, Vicente Cantua, petition No. 290, and was duly sworn, his evidence being given in English.

The U. S. law agent was present.

In answer to questions proposed by claimant's counsel, the witness testified as follows:

My name is W. E. P. Hartnell; my age is 55 years, and I have resided in California 30 years. I am acquainted with the writing of Juan B. Alvarado, Manuel Jimeno, David Spence, Manuel Castro, Santiago Estrada; their signatures to the papers before me, marked Exhibit No. 1, filed herewith, are genuine. I know the land called "Rancho Nacional," in Monterey county; Vicente Cantua built a house on it in 1839 or '40, and had cattle and horses on it, and cultivated portions of the land; he has occupied it ever since; I never heard his title disputed.

U. S. law agent present.

(Signed) W. E. P. HARTNELL.

Sworn to and subscribed before me this 25th of January, 1853.

(Signed) HARRY J. THORNTON,
Commissioner.

Filed in office, January 29th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

[1 S. D. K.]—1839.

Espediente promovido por el C. Vicente Cantua en pretencion del terreno llamado Rancho Nacional.

[166.]

2 S. D. K.

Señor Prefecto de 1er Distrito:

Vicente Cantua sargento de auxiliares en este Departam'to y natural del mismo, ante V. con *con* el debido respeto hace presente: Que hallandose posedor de algun numero de ganado vacuno, y caballar, y no poderse aumentar, y si mucho estravio de el por no tener un terreno seguro en donde mantenerse, ocurre á VS. con el fin de que se digne informar al ex'mo S'or Gobernador a mi favor, para que se le conceda al que representa el corto terreno que existe valdio llamado Rancho Nacional, siendo sus limites desde la *la* puvita de la siembra de Señora Serafina, hasta colindar con el rancho de Dn. José Tiburcio Castro, con el de los Señores Soberanes y el de Buena Vista, y con inclusion del paso de Quinto.

Este terreno, S'or Prefecto, ya está V. S. impuesto de su inutilidad para el objeto á que antes se ocupaba, por la corta estencion á que está reducido, y conformandose el que subscriba con el para proporcionar á su numerosa familia su subsistencia ruego á V. S., se me conseda por la proteccion que recibire de su liveral y benigno corazon.

P. F. á V. S. suplica se acceda á su instancia que recibira gracia y merced juro, &a.

Dispensando el papel comun por no haber del que corresponde.

Monterrey 2 de Abril, de 1839.

VICENTE CANTUA. X.

3 S. D. K.

Pueblo de Castro, *Abril* 4, *de* 1839.

Visto lo contenido en la presente solicitud y siendo notorio que el terreno que pretende la parte de Vicente Cantua se halla valdio, puede consedersele en propiedad, sugetandolo a los limites que espresa. Elevese con este informe al ex'mo S'or Gobernador del Departamento, para sus ulteriores providencias.

JOSE CASTRO.

4 S. D. K.

Monterrey, 4 *de Abril, de* 1839.

Vista la peticion con que dá principio este espediente, y el informe del S'or Prefecto, con todo lo demas que se tuvo presente y ver convino, de conformidad con lo dispuesto por las leyes y reglam'tos á la materia se declara á S. Vicente Cantua dueno en propiedad del terreno que era parte del conocido por Rancho Nacional, colindante con la punta

de las cementeras de S'ra Serafina, el rancho D. José Tiburcio Castro, con el de los S'res Soberanes, con el de Buena Vista, incluyendo el paso de quinto á reserba de la aprobacion de la Junta Departamental. Asi yo Juan Bautissa Alvarado, Gobernador del Departamento de las Californias, comande decrete y firme, de que doy feé.

ALVARADO.
MANUEL JIMENO,
Secretario del Despacho.

5 S. D. K.

[*For map see original, page* 7.]

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office, and under my custody, a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the six preceding and hereunto annexed pages of tracing paper, numbered from one to six inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain papers on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., the 14th day of July, 1852.

[L. S.]

SAM'L D. KING,
Surveyor Gen'l, Cal.

Filed in office July 17, 1852.
(Signed) GEO. FISHER, *Sec'y.*

"B."—Translation of Espediente.

Señor Prefect of the 1st District:

I, Vicente Cantua, sergeant of the auxiliary troops of this department, and a native of the same, before your honor, with due respect represent: That having a number of cattle and horses, and not being able to increase them, and losing many for the want of a secure place for keeping them, I come to your honor to ask that you will be pleased to report to his excellency, the governor, in my favor, that he may grant to the petitioner the small piece of land which is vacant, called "Rancho Nacional," with the limits from the point of the sowing of Señora Cerafina, to the line of the rancho of Don José Tibucio Castro, with that of the Señores Soberanes and that of Buena Vista, including the pas de Quinto.

This land, señor prefect, your honor is aware, is useless for the

object for which it was formerly occupied, on account of the limited extent to which it is reduced; the undersigned is content with it for the support of his numerous family, and I pray your honor to grant me the protection which I shall receive from your liberal and benignant heart.

Wherefore, I pray your honor to grant my petition, by which I shall receive favor and justice, swearing, &c.

Pardon the use of common paper, there being none of the corresponding stamp.

Monterey, April 2d, 1839. VICENTE CANTUA. X.

PUEBLO DE CASTRO, *April* 4, 1839.

Having seen the contents of the present petition, and it being notorious that the land asked for, on the part of Vicente Cantua, is vacant, it may be granted in fee, subject to the boundaries expressed. Let this be passed up in form to his excellency, the governor of the department, for his final decision.

JOSE CASTRO.

MONTEREY, *April 4th*, 1839.

Having seen the petition at the beginning of this espediente, the report of the *the* prefect, and all besides presented, and to be examined in conformity with the laws and regulations of the matter, Vicente Cantua is declared owner in fee of the land which was a part of the land *which was a part of the land* called "Rancho Nacional," bounded by the sowings of Señora Serafina, the rancho of Don José Tibucio Castro, with that of the Señores Soberanes, with that of Buena Vista, including the "Paso de Quinto," reserving the approbation of the most excellent departamental junta.

Thus, I, Juan B. Alvarado, governor of the department of the Californias, order, decree, and sign, of which I certify.

(Signed) ALVARADO.

(Signed) MANUEL JIMENO,
Secretary of Despaches.

Filed in office, July 17th, 1852.

(Signed) GEO. FISHER,
Sect'y.

Exhibit No. 1 *to deposition of W. E. P. Hartnell.*

Sello Primero, Seis Pesos.

Habilitado provisionalmente por la aduana maritima de Monterey, para los años de 1839 y 1840.

ALVARADO. ANTONIO M'A OSIO.

[L. S.]

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto el ciudadano Vicente Cantua ha pretendido para su beneficio personal y el de su familia, el parage conocido con el nombre

de Rancho Nacional, colindante con la punta del terreno de la sementera de Señora Seferina, con el rancho de Dn. José Tiburcio Castro, con el de los Señores Soberanes y el de Buena Vista, con inclusion del paso de Quinto: practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por las leyes y reglamentos de la materia; usando de las facultades que me son conferidas; á nombre de la nacion Mejicana, he venido en concederle el parage mencionado, declarandole la propiedad de el por las presentes letras, y sugeto á las condiciones sigui'tes:

1a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente, destinandola al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estarà ha vitada.

2a. Pedira al juez respectivo que le de posesion juridica, en virtud de este despacho, por el cual se demarcaràn los linderos en cuyos limites pondra a mas de las mojoneras algunos, arboles, frutales ò silvestres de alguna utilidad.

3a. El terreno de que se hace menciones de dos sitios de ganado mayor, poco mas ò menos segun esplica el diseño que corre en el espediente: el juez que diere la posesion lo hara medir conforme á ordenanza p'a señalar los linderos, quedando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraviniere á hestas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en el libro á que corresponde, y se entreque al interesado para su resguardo y demas fines. Dado en Monterrey, á cuatro de Abril, de mil ochocientos treinta y nueve.

JUAN B. ALVARADO.
MAN'L JIMENO,
S'rio del Despacho.

Queda tomada razon de este despacho en el libro de acientos sobre adjudicaciones de terrenos valdios, á fojas 2a. va.

JIMENO.

Sello Tercero, Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIA OSIO.

ALVARADO.
[L. S.]

S'or Juez de Paz :

Vicente Cantua, C'no Mejicano y vecino de esta demarcacion, ante V. como mas haya lugar en d'ro dice; que habiendo obtenido la con-

cesion propia del terreno conocido con el nombre de Rancho Nacional; ocurre á V. con el fin de que se sirva darle la posesion juridica conforme esta prevenida en el art'o 2o. del titulo de d'ho terreno que se le espidio el dia 4 de Abril, del año pop'do que devidam'te acompaña como igualm'te la confirmacion respectiva para que todo obre en los efectos de seados. Por tanto A. V. suplica se sirba pronerlo en la posesion que solicita de lo que recibira merced y justicia.

Monterey, Julio 24, de 184 .

A ruego del interesado.

MANUEL CASTRO.

Por presentado y admitido procedase por mi el presente juez, á la medicion señalam'to de linderos y judicial posesion que solicita, el interesado en esta instancia citandose para efectuarlo el dia treinta de presente como igualmente á los colindantes de aquel terreno. Asi yo el juez de paz, de esta capital lo decrete, mande y firme, con los de asistencia.

DAV. SPENCE.

De as'a: MANUEL CASTRO,
De as'a: SANTIAGO ESTRADA.

En la fha. se le notifico el auto que antesede al C'no Vicente Cantua, y entendido de el diso lo oye y que se da por citado y por no saber firmar lo hize yo con los de asistencia.

DAV. SPENCE.

De as'a: MAN'L CASTRO,
De as'a: SANTIAGO ESTRADA.

Ran—

[Sello Cuarto, Una Cuartilla.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departemento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIA OSIO.

ALVARADO.]
[L. S.]

—cho Nacional, Julio 30, 1840.

Para la medicion señalam'to de linderos y posesion del C'no Vicente Cantua, nombro por medidores á los C'os Ysidro Salazar y Andres Soto, quienes previa la aseptacion y juram'to procederan al desempeño de su encargo: Asi yo el juez de paz lo decrete, mandé y firmé, con los de asistencia.

DAV. SPENCE.

De as'a: MAN'L CASTRO,
De as'a: SANTIAGO ESTRADA.

En la misma presentes los C'nos Ysidro Salazar y Andres Soto, se les notifico el auto de su nombramiento, y entendidos de el dijeron lo

oyen: que aceptaban y aseptaron jurando, por Dios y senal de la Cruz, conforme á derecho usarlo fiel y legalm'te a todo su leal saber y entender sin fraude contra persona alguna, y no firmaron por no saber hize lo yo y los de asistencia.

DAV. SPENCE.

De as'a: MAN'L CASTRO,
De as'a: SANTIAGO ESTRADA.

En el mismo parage dia, mes y año, los espresados medidores en presencia de mi el juez, tomaron un cordel de chicote y con una vara de medir usual Mejicana midieron cien varas para hacer la medida y putas al encino que queda junto al paso de Quinto, se midieron para el œste, nor-norœste cincuenta y ocho cordeles de á cien varas, hasta llegar al paso de Sra. Serafina. De este paso al Sanjon hasta los linderos del sur nor-norœste cuarenta y cuatro cordeles, y por la orilla del Sanjon hasta los linderos de Buenavista junto á la laguna este cuarto al sur sesenta cordeles, y des de la mesa al nor-norœste de d'ha laguna en linea recta el encino del paso de Quinto, y—

[Sello Cuarto, Una Cuartilla.

Habilitado provicionalmente por la aduana maritima del puerto de Monterrey, en el departamente de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO.] ANTONIO MARIA OSIO.

—el pico de Gavilan sur-œste cuarto al sur secenta y cinco cordeles. En cuyas mediciones mandé se formaran las mojoneras cor-
[L. S.] resp'tes que se senalasen los linderos que le pertenecen. El terreno medido es como dos sitios de ganado mayor, y para su constancia lo firmo, con los de asistencia.

DAV. SPENCE.

De as'a: MAN'L CASTRO,
De as'a: SANTIAGO ESTRADA.

En el Rancho Nacional, á los treinta dias del mes de Julio, de mil ochocientos cuarenta, yo el juez de paz de esta demarcacion despues de practicadas las medidas del mencionado rancho por las que resulta tener dos sitios mandé, que entrase en posecion del espresado sitio el C'no Vicente Cantua, quien bajo las medidas citadas y formalidades acustumbradas en estos casos, lo verificó de luego a luego arrancando yerbas y haciendo demostraciones como dueño del sitio que se le ha dado posecion cuya validacion autorizo y firmo, con los de asistencia, por no saber el interesado. Pasa á la vuelta.

DAV. SPENCE.

De as'a: MAN'L CASTRO,
De as'a: SANTIAGO ESTRADA.

Exhibit No. 1 to deposition of Mr. E. P. Hartnell, taken in No. 290.
H. J. T.

MONTERREY, *Julio* 30, *de* 1840.

Tomese razon en el libro de posesiones, y devuelvase este espediente al interesado para que le sirva de titulo. Asi yo el juez de paz lo decreté, mande y firmé, con los de asistencia.

DAV. SPENCE.

De as'a: MANUEL CASTRO,
De as'a: SANTIAGO ESTRADA.

En la f'ha se tomo razon de este titulo a fojas 11 del libro respectivo, y se le devolvio el original en cinco f. utiles y para constancia lo anoto y rubrico.

SPENCE.

"A."—Translation of title.

Seal of the first class, Six dollars.

Authorized provisionally by the maratime custom-house of Monterey, for the years 1839 and 1840.

(Signed) ALVARADO,
" ANTONIO MA. OSIO.

[SEAL.]

Juan B. Alvarado, constitucional governor of the department of the Californias:

Whereas, citizen Vicente Cantua has solicited for his personal benefit, and that of his family, the place known by the name of Rancho Nacional, bounded by the point of the sowing ground of Señora Serafina, the rancho of Don José Tiburcio Castro, that of Miss Soberanes, and that of Buena Vista, including the paso de Quinto, the necessary steps and investigations having been previously taken, and made in conformity with the laws and regulations respecting the subject: I have, by virtue of the power conferred upon me, granted unto him the before mentioned land in the name of the Mexican nation, declaring unto him the ownership thereof by these present letters, subject to the following conditions:

1st. He may fence it without prejudicing the crossings, roads, and privileges, destining it to the use or cultivation which may best suit him, but within one year he shall build a house, and it must be inhabited.

2d. He shall request of the respective magistrate juridical possession in virtue of this title; said magistrate will designate the boundaries at the limits whereof he shall, besides placing the landmarks, plant some fruit trees, or wild ones of some utility.

3d. The land whereof donation is made comprises two square leagues, (dos sitios de ganado mayor,) a little more or less, as appears by the plat which accompanies the espediente; the magistrate who gives possession shall cause it to be measured according to law, in order to

designate the boundaries, leaving the surplus to the nation for the necessary uses.

4th. If he transgress these conditions he shall forfeit his right to the land, and it may be denounced by another.

I consequently command that these presents serving him for a title be recorded in the corresponding book, and be returned to the party interested for his security and further ends.

Given in Monterey, on the fourth of April, eighteen hundred and thirty-nine.

(Signed) JUAN B. ALVARADO.
" MANUEL JIMENO,
Governor's Secretary.

A record of this title has been made in the book of entries respecting the adjudication of vacant lands at folio 2, page second.

(Signed) JIMENO.

Filed in office, July 17th, 1852.

(Signed) GEO. FISHER, *Sect'y.*

F.—Translation of juridical possession.

Seal of second class, Two reales.

Authorized provisionally by the maratime custom-house of the port of Monterey, in the department of the Californias, for the years eighteen hundred and forty and forty-one.

(Signed) ALVARADO,
(Signed) ANTONIO MA. OSIO.

[Custom-house seal.]

Señor Justice of the Peace:

Vicente Cantua, a Mexican citizen and resident of this jurisdiction, as the law best allows him to make, unknown to you, that having obtained the proper grant of the land known by the name of Rancho Nacional, he applies to you in order that you may be pleased to give him the juridical possession thereof, in conformity with the provisions of the 2d article of the title to said land, which was granted to him on the 4th of April last year, and duly accompanies, as likewise the respective approval, in order that the whole may the desired effect.

He therefore requests that you will be pleased to put him in the possession which he asks for, whereby he will receive favor and justice.

Monterey, July 24th, 1840.

At the request of the party interested.

(Signed) MANUEL CASTRO.

Considered as presented and admitted, let me, the present justice, proceed to the measurement, designation of boundaries, and juridical possession asked for by the party interested in this petition, fixing for the execution thereof, and for (the appearance) of the neighboring land-owners, the thirtieth of the present month.

Thus, I, the justice of peace of this capitol, did decree, command, and sign, with the assisting witnesses.

(Signed) DAVID SPENCE.
(Signed) MANUEL CASTRO,
(Signed) SANTIAGO ESTRADA.

On the same date the foregoing decree was notified to citizen Vicente Cantua, who having understood it, said that he heard it and considered himself as summoned, and not knowing how to sign, I did so with the assisting witnesses.

(Signed) DAVID SPENCE.
(Signed) MAN'L CASTRO,
(Signed) SANTIAGO ESTRADA.

RANCHO NACIONAL, *July 30th*, 1840.

For the measurement, designation of boundaries, and possession of citizen Vicente Cantua, I appointed as measurers citizens Ysidro Salazar and Andres Soto, who, after accepting and taking oath, will proceed to comply with their commission. Thus, I, the justice of the peace, did decree, command, and sign, with the assisting witnesses.

(Signed) DAVID SPENCE.
(Signed) MANUEL CASTRO,
(Signed) SANTIAGO ESTRADA.

On the same date, citizens Ysidro Salazar and Andres Soto being present, the decree of their appointment was notified to them, who, having understood it, said that they heard it; that they accepted and did accept it, swearing by God and the sign of the cross, according to law, to make use thereof faithfully and legally to the best of their knowledge and understanding, without fraud against any person, and they did not sign, not knowing how, but I did so with the assisting witnesses.

(Signed) DAVID SPENCE.
(Signed) MAN'L CASTRO,
(Signed) SANTIAGO ESTRADA.

On the same spot, day, month, and year the said measurers, in presence of me, the justice, took a hempen cord, and with a common Mexican vara measure measured off one hundred varas to make the measurement, and placing themselves at the oak tree, close to the pass de Quinto, they measured towards the N. N.W. fifty-eight cords of one hundred varas each to the pass of Senora Seferina; from this pass to the gulch, the boundary line of the Sansal, N. N.W. forty-four cords; and along the edge of the gulch to the boundary line of Buena Vista, close to the lagoon, E. $\frac{1}{4}$. S. sixty cords; and from the table-lands at the N. N.W. of this lagoon, in a direct line to the oak tree of the paso de Quinto and the peak of the Gavelan mountain, S.W. $\frac{1}{4}$ S. sixty-five cords; at which measurements I ordered the corresponding landmarks to be formed to designate the boundaries belonging (to Cantua.)

The land measured comprises about two square leagues; in witness whereof I sign with the assisting witnesses.

(Signed) DAVID SPENCE.

Assisting witnesses:
(Signed) MANUEL CASTRO,
(Signed) SANTIAGO ESTRADA.

In the Rancho Nacional, on the thirtieth of July, eighteen hundred and forty, I, the justice of the peace of this jurisdiction, after having concluded the measurement of said rancho, which resulted in containing two sitios, *I* commanded that citizen Vicente Cantua should enter into possession of said farm, according to the before mentioned measurements and customary formalities in these cases, and he immediately did so by pulling up grass, and making other demonstrations as owner of the land, whereof possession has been given to him, the validity whereof I authorize and sign with the assisting witnesses, the party interested not knowing how.

(Signed) DAVID SPENCE.

Ass'tg witnesses:
(Signed) MAN'L CASTRO,
(Signed) SANTIAGO ESTRADA.

MONTEREY, *July 30th*, 1840.

Let a record be made in the book of possessions, and this expediente be returned to the party interested, in order that it may serve him for a title.

Thus, I, the justice of the peace, did decree, command, and sign with the assisting witnesses.

(Signed) DAVID SPENCE.

Assisting witnesses:
(Signed) MANUEL CASTRO,
(Signed) SANTIAGO ESTRADA.

On the same day a record of this title was made at folio 11th of the respective book, and the original was returned to him in five useful folios; in testimony whereof I note it down, and sign with my flourish.

(Signed) SPENCE.

I, the undersigned, do hereby certify the foregoing to be a true and faithful translation of the original documents in the possession of Señor Vicente Cantua.

(Signed) W. E. P. HARTNELL,
State Translator.

Office of the translator, Rancho del Patrocenio, 23d March, 1852.

Filed in office, July 17th, 1852.

GEO. FISHER, *Sec'y.*

Opinion of the Board delivered by Commissioner A. Felch.

VICENTE CANTUA
vs.
THE UNITED STATES.

For the place called Rancho Nacional, situated in Monterey county, containing two square leagues of land.

The basis of the claimant's right to the land is founded on a grant to him made by Governor Juan B. Alvarado, dated April 4th, 1839, which is given in evidence. By the proper documentary evidence it is shown that the grantee obtained a juridical measurement, and was put into possession of the premises under his grant on the 30th day of July, 1840. This measurement, made in accordance with the grant, and the map attached to the expediente, a traced copy of which is filed in this case, obviates all difficulty as to the location and boundaries of the premises.

The testimony of W. E. P. Hartnell shows that the claimant built a house on the premises, and has continued to occupy and cultivate the land from a period very soon after the grant to the present time. No approval by the departmental assembly is shown, but the proof of the performance of the conditions of the grant, and the law, is sufficient to establish an equity which entitles the claimant to a confirmation.

Confirmed.

Filed in office Jan. 24th, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Decree of Confirmation.

VICENTE CANTUA
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petition is valid, and it is therefore hereby decreed that the same be confirmed.

The land of which confirmation is hereby made is the same known by the name of Rancho Nacional, situated in Monterey county, and is occupied by said claimant, bounded and described as follows, to wit: commencing at the oak tree, close to the paso de Quinto, and running thence toward the west-northwest five thousand eight hundred varas to the pass of Senora Serafina; from this pass to the gulch, the boundary line of the Sansal, four thousand four hundred varas in a north-northwest direction, and thence along the edge of the gulch to the boundary line of Buena Vista, close to the lagoon east, one quarter south six thousand varas, and from the table-land, at the northwest of this lagoon, in a direct line to the oak tree of the paso de Quinto, and the peak of the Gavellan mountain; southwest one quarter south, six thousand five hundred varas; reference to be had also to the map,

which constitutes a part of the espediente, a traced copy of which is on file in this case, and to the testimonial of juridical possession, also making a part of the file therein.

(Signed) ALPHEUS FELCH,
" THOMPSON CAMPBELL,
" R. AUG. THOMPSON,
Commissioners.

Filed in office Jan. 24th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle private land claims in the State of Cal'a.

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-five pages, numbered from 1 to 25, both inclusive, to contain a true, correct, and full transcript of the record, of the proceedings, and of the decision of the board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 290, on the docket of the said board, wherein Vicente Cantua is the claimant against the United States for the place known by the name of "Rancho Nacional."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twelfth day of September, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify, that the foregoing twenty-five pages numbered from 1 to 25, both inclusive, contain a full, true, and correct copy of transcript No. 290 filed in this office, wherein Vicente Cantua is appellee, and the United States are appellants, for "Rancho Nacional."

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Los Angeles, California,
[L. S.] this nineteenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

C. E. CARR, *Clk.*

DISTRICT COURT UNITED STATES,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES COUNTY.

VICENTE CANTUA, Appellee, ads. THE UNITED STATES, Appellants. } Docket No. 70. Transcript No. 290.

Be it remembered, that on the 16th day of September, A. D. 1854, in the district court of the United States for the southern district of California, the following proceedings were had, to wit: a duly certified transcript of the proceedings and decision of the commissioner, to ascertain and settle the private land claims in the State of California, when sitting as a board in the case wherein Vicente Cantua is the claimant against the United States, for the place named "Nacional," was received and filed and docketed with No. 70, and is as follows, to wit: (Vide page 1.)

LOS ANGELES, *Jan'y* 10*th*, 1855.

In case No. 70, Vicente Cantua, for "Nacional," the notice of appeal from U. S. Attorney General was filed.

(Vide page 3.)

LOS ANGELES, *Aug.* 13*th*, 1855.

In same case the petition of United States for review was filed.

(Vide page 4.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Sept.* 24*th*, 1855.

In same case the answer of appellee was filed.

(Vide page 11.)

LOS ANGELES, *Sept.* 24*th*, 1855.

In same case the opinion of the court confirming the claim was delivered, and the following decree entered.

(Vide page 12.)

LOS ANGELES, *Oct.* 18*th*, 1855.

In same case the order for appeal, on motion of P. Ord, U. S. district attorney, was filed. (Vide page 13.)

Notice of Appeal.

OFFICE OF THE ATTORNEY GENERAL OF THE U. STATES,
WASHINGTON, 30*th November*, 1854.

VICENTE CANTUA vs. THE UNITED STATES. } 290.

You will please take notice, that in the above case decided by the commissioners to ascertain and settle private land claims in the State

of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of August, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Filed Jan'y 10th, 1855.

C. E. CARR, *Clerk.*

Petition for Review.

In the District Court of the United States for the southern district of California.

LOS ANGELES COUNTY, *State of California:*

VICENTE CANTUA ads. THE UNITED STATES. } No. 70, (Transcript No. 290.)

To the honorable Isaac S. K. Ogier, judge of the district court of the United States for the southern district of California.

The petition of Pacificus Ord, (of Los Angeles county,) attorney of the United States for the southern district of California, who petitions in this behalf for the United States, and being present here in court in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit, on or about the 17th day of July, A. D. 1852, Vicente Cantua presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called Rancho Nacional, in the county of Monterey, in the words and figures following, to wit:

"The petitioner, Vicente Cantua, respectfully shows, that on the 4th day of April, A. D. 1839, Juan B. Alvarado, governor of California, by virtue of authority in him vested, granted to the petitioner the tract of land called Rancho Nacional, situate in the present county of Monterey, containing two square leagues, more or less, with the boundaries described in the title-papers, a copy of which title is submitted herewith marked "A," with a translation marked "B," and also a certified copy of the espediente marked "G," with a translation marked "D;" and the petitioner further shows, that said land was duly surveyed, its boundaries marked, and the juridical possession given to the petitioner on the 30th day of July, A. D. 1840, a copy of which act is submitted herewith marked E, with a translation marked "F;" that he is now, and has been for more than thirteen years, in the quiet, peaceful, and undisputed possession of said tract of land; that he knows of no conflicting claim; that he relies for confirmation of title upon the original papers, copies of which are submitted herewith; upon the records and minutes in the archives now in charge of the surveyor general; and upon such other and further proofs as he may be advised are

necessary. Wherefore he prays the commissioners to confirm to him the said tract of land."

Your petitioner further represents, that thereafter, to wit, on the 24th day of January, A. D. 1854, the said commissioners confirmed by final decree the said claim of the said Vicente Cantua, in the words and figures following, to wit:

"In this case, on hearing the proofs and allegations, it is adjudged by the commissioners that the claim of the said petitioner is valid, and it is therefore hereby decreed that the same be confirmed.

"The land of which confirmation is hereby made is the same known by the name of Rancho Nacional, situated in Monterey county, and is occupied by said claimant, bounded and described as follows, to wit: Commencing at the oak tree, close to the pasa de Quinto, and running thence towards the west-northwest five thousand eight hundred varas to the pass of Señora Serafina; from this pass to the gulch, the boundary line of the Sansal, four thousand four hundred varas in a north-northwest direction; and thence along the edge of the gulch to the boundary line of Buena Vista, close to the lagoon east, one-quarter south, six thousand varas; and from the table-land at the northwest of this lagoon, in a direct line to the oak tree of the paso de Quinto and the peak of the "Gavelan" mountain, southwest, one-quarter south, six thousand five hundred varas; reference to be had also to the map which constitutes a part of the espediente, a traced copy of which is on file in this case; and to the testimonial of juridical possession also, making a part of the files therein.

(Signed) "ALPHEUS FELCH,
(Signed) "THOMPSON CAMPBELL,
(Signed) "R. AUG. THOMPSON,
"*Commissioners.*"

That thereafter, to wit, on the 16th day of September, A. D. , a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 70, (transcript No. 290,) reference to which it is prayed may be had and made a part of this petition.

That on the 30th day of August, A. D. 1854, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said commissioners in said cause, (No. 290,) and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 10th day of January, A. D. 1855, the said Attorney General of the United States filed or caused to be filed, on behalf of the United States, a notice with the said clerk of said district court for the southern district of California, that the appeal in said cause of Vicente Cantua vs. The United States, from the decision of said commissioners to ascertain and settle the private land claims in the

State of California, in the district court of the United States for the southern district of California, would be presented by the United States. Your petitioner further represents, that the said land claimed as aforesaid is within the jurisdiction of this honorable court.

And your petitioner represents and insists, that the said decree of said commissioners is erroneous and ought to be reviewed, reversed, and set aside for many errors and imperfections of law and evidence apparent in said certified transcript of said cause, now on appeal from said commissioners to this honorable court.

And your petitioner further represents, that the said claim is invalid, and the said decree erroneous on the following grounds :

I. And the said attorney denies all and singular each and every allegation in the said petition of said claimant to said commissioners of said date; and he further denies, that any grant for said land was ever made as alleged in said petition; and he denies further, that the said claimant has shown any or sufficient evidence of the validity of said claim.

II. That the said alleged grant of Juan B. Alvarado was made in violation of the Colonization law of Mexico of the 18th of August, A. D. 1824, in this: that the land granted, as alleged by claimant, was and is within ten leagues of the sea-coast; and there is no evidence shown by claimant, that the supreme general executive power of Mexico previously approved of the colonization of the public land in Upper California, lying within ten leagues of the sea-coast. And it is denied that such previous consent of said supreme general executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant, the said land claimed as aforesaid was occupied by, and in the possession of the missions of the Territory of Upper California; and it was held and occupied, particularly, by the mission of San Carlos, and could not, therefore, be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the Territories of Mexico of the 21st of November, A. D. 1828.

V. That at the date of the said alleged grant, the said land, alleged to have been granted as aforesaid, was a reserve of the government of Mexico, for their use and benefit, and for the pasturage of the horses of the troops, or soldiers of the said government; and was known as the Rancho Nacional or Government rancho.

VI. That the said Juan B. Alvarado had no lawful right to colonize or grant the said tract of land, it being then a reserve, and in the use of the said government for said purposes.

VII. That there is no evidence that the said alleged grant was ever approved by the Departmental Junta or assembly of California, or the said supreme government.

VIII. That the said alleged grant does not contain a sufficient de-

scription of the land, so that it can with certainty be identified and surveyed.

IX. That the alleged survey and juridical possession of the date of the 30th of July, 1840, was not made according to the said alleged grant and the map referred to therein, nor according to the ordinance or law.

X. That said claimant shows no definitive grant for said land claimed as aforesaid.

XI. That the said alleged juridical survey and possession of said land of said date by David Spence was unlawful, for the reason that the said claimant, Vicente Cantua, had not, at the said date, the 30th of July, 1840, a definitive grant or title approved by the Departmental Junta or assembly of California or the supreme government of Mexico.

XII. That there is no evidence that David Spence was justice of the peace of Monterey on the said 30th July, 1840, and as such had lawful authority to make said survey and give the juridical possession to said Vicente Cantua of said land; and it is denied that said David Spence was, at said date, justice of the peace of Monterey, or had the lawful authority to perform said juridical acts of survey and possession.

And no sufficient proof having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made or grounded thereon, but the said petition ought to have been dismissed, and said claim rejected by said commissioners upon the grounds aforesaid.

And the said claimant having no valid right or title derived from the Spanish or Mexican government to the said land claimed by him as aforesaid, the lawful right or title in and to the said land was acquired by, and it now belongs to the said United States, by virtue of the treaty of peace, friendship, limits, and settlement with the Republic of Mexico, dated at the city of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore, the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," approved March 3d, 1851, and the laws and statutes in such case made and provided, prays that the said Vicente Cantua may be served with a copy of this petition; and that this honorable court will review the said decision or final decree of confirmation of said commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Vicente Cantua for said land claimed and confirmed as aforesaid; and that the same may be decreed invalid, and all such other orders, judgments, or decrees, as may be just, with costs and general relief.

P. ORD, *Attorney of the United States*
For the southern district of California.

Filed August 13, 1855.
(Signed) C. E. CARR, *Clerk*.

State of California, in the district court of the United States for the southern district of California, would be presented by the United States. Your petitioner further represents, that the said land claimed as aforesaid is within the jurisdiction of this honorable court.

And your petitioner represents and insists, that the said decree of said commissioners is erroneous and ought to be reviewed, reversed, and set aside for many errors and imperfections of law and evidence apparent in said certified transcript of said cause, now on appeal from said commissioners to this honorable court.

And your petitioner further represents, that the said claim is invalid, and the said decree erroneous on the following grounds :

I. And the said attorney denies all and singular each and every allegation in the said petition of said claimant to said commissioners of said date; and he further denies, that any grant for said land was ever made as alleged in said petition; and he denies further, that the said claimant has shown any or sufficient evidence of the validity of said claim.

II. That the said alleged grant of Juan B. Alvarado was made in violation of the Colonization law of Mexico of the 18th of August, A. D. 1824, in this: that the land granted, as alleged by claimant, was and is within ten leagues of the sea-coast; and there is no evidence shown by claimant, that the supreme general executive power of Mexico previously approved of the colonization of the public land in Upper California, lying within ten leagues of the sea-coast. And it is denied that such previous consent of said supreme general executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant, the said land claimed as aforesaid was occupied by, and in the possession of the missions of the Territory of Upper California; and it was held and occupied, particularly, by the mission of San Carlos, and could not, therefore, be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the Territories of Mexico of the 21st of November, A. D. 1828.

V. That at the date of the said alleged grant, the said land, alleged to have been granted as aforesaid, was a reserve of the government of Mexico, for their use and benefit, and for the pasturage of the horses of the troops, or soldiers of the said government; and was known as the Rancho Nacional or Government rancho.

VI. That the said Juan B. Alvarado had no lawful right to colonize or grant the said tract of land, it being then a reserve, and in the use of the said government for said purposes.

VII. That there is no evidence that the said alleged grant was ever approved by the Departmental Junta or assembly of California, or the said supreme government.

VIII. That the said alleged grant does not contain a sufficient de-

scription of the land, so that it can with certainty be identified and surveyed.

IX. That the alleged survey and juridical possession of the date of the 30th of July, 1840, was not made according to the said alleged grant and the map referred to therein, nor according to the ordinance or law.

X. That said claimant shows no definitive grant for said land claimed as aforesaid.

XI. That the said alleged juridical survey and possession of said land of said date by David Spence was unlawful, for the reason that the said claimant, Vicente Cantua, had not, at the said date, the 30th of July, 1840, a definitive grant or title approved by the Departmental Junta or assembly of California or the supreme government of Mexico.

XII. That there is no evidence that David Spence was justice of the peace of Monterey on the said 30th July, 1840, and as such had lawful authority to make said survey and give the juridical possession to said Vicente Cantua of said land; and it is denied that said David Spence was, at said date, justice of the peace of Monterey, or had the lawful authority to perform said juridical acts of survey and possession.

And no sufficient proof having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made or grounded thereon, but the said petition ought to have been dismissed, and said claim rejected by said commissioners upon the grounds aforesaid.

And the said claimant having no valid right or title derived from the Spanish or Mexican government to the said land claimed by him as aforesaid, the lawful right or title in and to the said land was acquired by, and it now belongs to the said United States, by virtue of the treaty of peace, friendship, limits, and settlement with the Republic of Mexico, dated at the city of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore, the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," approved March 3d, 1851, and the laws and statutes in such case made and provided, prays that the said Vicente Cantua may be served with a copy of this petition; and that this honorable court will review the said decision or final decree of confirmation of said commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Vicente Cantua for said land claimed and confirmed as aforesaid; and that the same may be decreed invalid, and all such other orders, judgments, or decrees, as may be just, with costs and general relief.

P. ORD, *Attorney of the United States*
For the southern district of California.

Filed August 13, 1855.
(Signed) C. E. CARR, *Clerk*.

No. 70.

In the United States District Court for the southern district of California.

THE UNITED STATES, appellants,
vs.
VICENTE CANTUA, appellee.
} *Answer of Appellee.*

Answer.

Vicente Cantua, appellee, appears by his attorneys, and for answer to the petition of the United States filed herein, says:

That his title to the land called Rancho Nacional, as set forth and described in his petition to the United States Board of Land Commissioners, and in the documentary and other evidence in this case, is a good and valid title; and he prays this honorable court to affirm the decision of the Board of Commissioners, and to decree his title to be valid.

HALLECK, PEACHY & BILLINGS,
Attys. for appellee.

LOS ANGELES, *Sept.* 22*d*, 1855.

Filed Sept. 24th, 1855.
(Signed) C. E. CARR, *Clerk*,
(Signed) By JOHN W. ROSS, *Dep'y.*

No. 70.

VICENTE CANTUA, appellee,
ads.
THE UNITED STATES, appellee.
} Rancho Nacional.

United States District Court for the southern district of California.

This cause coming on to be heard on an appeal from the decision of the commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, on a transcript of the proceedings and decision, and the papers and evidence on which said decision was founded; and it appearing to the court that the transcript and notice of appeal has been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the claim of the appellee to the land described in the grant on file in the case is a good and valid claim, and the same is hereby confirmed to the extent of two square leagues, provided said quantity hereby confirmed be contained within the limits called for in said grant; and in case there be a less quantity, then the claim of the appellee to such less quantity is hereby confirmed.

ISAAC S. K. OGIER,
United States dist. judge for the south'n dist. of California.

In the United States District Court for the southern district of California.

Special Term, September, 1855.—Los Angeles.

VICENTE CANTUA, app'ee, ads. THE UNITED STATES, app'lt. } No. 70.—(Transcript No. 290.)

On motion of P. Ord, attorney of the United States for the southern district of California, it is ordered by the court that an appeal be granted the United States to the Supreme Court of the United States, from the judgment of this court against the United States in the above entitled cause, rendered on or about the 24th day of September, A. D. 1855.

P. ORD,
U. S. Dist. Att'y.

Filed October 18th, 1855.
(Signed) C. E. CARR, *Clerk.*
(Signed) By JNO. ROSS, *Deputy.*

UNITED STATES DISTRICT COURT,
Southern district of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing thirteen pages, numbered from 1 to 13, both inclusive, to contain a full, true and correct transcript of the record of the proceedings, and of the decision of the said court, of the documentary evidence, and of testimony of witnesses upon which the same is founded, on file in this office, in case No. 70 in the docket of the said court, wherein Vicente Cantua is appellee, and the United States are appellants, for "Rancho Nacional."

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Los Angeles, California, this [L. S.] nineteenth day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

C. E. CARR, *Clerk.*